

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WESTFIELD INSURANCE COMPANY)	
and HORACE MANN INSURANCE)	
COMPANY)	C.A. No.: 1:20-cv-00918-LPS
A/K/A TEACHERS INSURANCE COMPANY)	
)	
Plaintiff,)	
)	
)	vs.
)	
AMAZON.COM INC., et al.,)	
)	
Defendants)	

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant, Amazon.com, Inc. (“Answering Defendant”) hereby responds to the allegations of Plaintiffs’ Second Amended Complaint (“Complaint”) as follows:

PARTIES

1. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1 of the Complaint, and therefore, denies them.

2. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 2 of the Complaint, and therefore, denies them.

3. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 3 of the Complaint, and therefore, denies them.

4. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the Complaint, and therefore, denies them.

5. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 of the Complaint, and therefore, denies them.

6. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 of the Complaint, and therefore, denies them.

7. Admitted.

8. Amazon admits only that it sells some products but denies that it sold any of the products at issue in Plaintiffs' Complaint. Amazon denies all other allegations of paragraph 8.

9. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 9 of the Complaint, and therefore, denies them.

10. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 10 of the Complaint, and therefore, denies them.

11. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 11 of the Complaint, and therefore, denies them.

12. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 12 of the Complaint, and therefore, denies them.

13. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13 of the Complaint, and therefore, denies them.

14. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14 of the Complaint, and therefore, denies them.

15. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 of the Complaint, and therefore, denies them.

16. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16 of the Complaint, and therefore, denies them.

JURISDICTION AND VENUE

17. The averment in Paragraph 17 constitutes a legal conclusion to which no response is required.

18. The averment Paragraph 18 constitutes a legal conclusion to which no response is required.

STATEMENT OF FACTS

19. Answering Defendant incorporates by reference its answers to Paragraphs 1 through 18 as if same were fully set forth at length herein.

20. Amazon admits only that a Powerextra 2 Pack 11.1V 6300mAh 10C 3S LiPo Battery Pack for Yuneec was bought from third-party seller Wondershop using Amazon.com on January 10, 2017. Amazon denies that it sold the battery and denies all other allegations of Paragraph 20.

21. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 21 of the Complaint, and therefore, denies them.

22. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 22 of the Complaint, and therefore, denies them.

23. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 23 of the Complaint, and therefore, denies them.

24. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 24 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

25. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 25 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

26. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 26 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this

averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

27. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 27 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

28. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 28 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied.

29. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 29 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

30. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 30 of the Complaint,

and therefore, denies them. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

31. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 31 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

32. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 32 of the Complaint, and therefore, denies them. To the extent that this averment calls for expert opinion, Answering Defendant will respond in accordance with the applicable Trial Scheduling Order.

33. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 33 of the Complaint, and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied.

34. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 31 of the Complaint,

and therefore, denies them. To the extent that the averments in the corresponding paragraph constitute legal conclusions, they are denied.

COUNT I
PLAINTIFFS v. DEFENDANTS
BREACH OF EXPRESS AND IMPLIED WARRANTIES

35. Answering Defendant incorporates by reference its answers to Paragraphs 1 through 35 as if same were fully set forth at length herein.

36. Denied as a conclusion of law as to Answering Defendant.

37. Denied as a conclusion of law as to Answering Defendant.

38. Denied as a conclusion of law as to Answering Defendant.

39. Denied as a conclusion of law as to Answering Defendant.

40. Denied as a conclusion of law.

WHEREFORE, Amazon.com, Inc. respectfully requests judgment in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

COUNT II
PLAINTIFFS v. AMAZON
NEGLIGENCE

41. Answering Defendant incorporates by reference its answers to Paragraphs 1 through 40 as if same were fully set forth at length herein.

42. The averments in Paragraph 42, and its subparts, are denied as conclusions of law.

43. The averments in Paragraph 43 are denied as conclusions of law.

WHEREFORE, Amazon.com, Inc. respectfully requests judgment in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

COUNT III
PLAINTIFFS v. WONDERSHOP
NEGLIGENCE

44. Answering Defendant incorporates by reference its answers to Paragraphs 1 through 43 as if same were fully set forth at length herein.

45. The averments in Paragraph 45, and its subparts, are directed to a defendant other than this Answering Defendant and therefore no response is required.

46. The averments in Paragraph 46 are directed to a defendant other than this Answering Defendant and therefore no response is required.

WHEREFORE, Amazon.com, Inc. respectfully requests judgment in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

COUNT IV
PLAINTIFFS v. GETFPV LLC and LUMENIER LLC
NEGLIGENCE

47. Answering Defendant incorporates by reference its answers to Paragraphs 1 through 46 as if same were fully set forth at length herein.

48. The averments in Paragraph 48, and its subparts, are directed to a defendant other than this Answering Defendant and therefore no response is required.

49. The averments in Paragraph 49 are directed to a defendant other than this Answering Defendant and therefore no response is required.

WHEREFORE, Amazon.com, Inc. respectfully requests judgment in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' causes of action are barred by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' causes of action are barred by any applicable statutes of repose.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery in this action on the basis of Plaintiffs' contributory negligence, assumption of risk and/or other fault.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages are mitigated by virtue of comparative fault.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages are mitigated by virtue of contributory negligence.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to join parties in whose absence complete and fair relief cannot be accorded.

EIGHTH AFFIRMATIVE DEFENSE

The alleged injuries, damages and losses were caused by third persons not parties to this action for whom Amazon.com, Inc. is not responsible.

NINTH AFFIRMATIVE DEFENSE

Amazon.com, Inc. did not sell or supply the products alleged to have caused the Plaintiffs' damages, injuries and losses.

TENTH AFFIRMATIVE DEFENSE

Recovery is barred by Plaintiffs' and/or its insured's spoliation of the evidence.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs do not have capacity to sue.

TWELTH AFFIRMATIVE DEFENSE

Any claims based on the content of third-party information published on Amazon.com are barred by the Communications Decency Act, 47 USC § 230.

THIRTEENTH AFFIRMATIVE DEFENSE

The product was not defective.

FOURTEENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred in the event the product underwent a substantial change and/or alteration by persons or parties beyond Amazon.com, Inc.'s control.

FIFTEENTH AFFIRMATIVE DEFENSE

Recovery is barred because of the abnormal use and/or unintended use and/or misuse of the product.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to provide Amazon.com, Inc. timely notice of any alleged defect, breach of warranty, or other claim.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

Amazon.com, Inc. is not liable pursuant to 18 *Del. C.* § 7001.

NINETEENTH AFFIRMATIVE DEFENSE

Amazon.com, Inc. reserves the right to assert any additional defenses that discovery or investigation might reveal to be appropriate.

WHEREFORE, Defendant Amazon.com, Inc. respectfully requests that judgment be entered in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

CROSSCLAIM FOR INDEMNIFICATION

Amazon.com, Inc. denies that it has any liability to Plaintiffs. However, if this Amazon.com, Inc. is held liable to answer to Plaintiffs under the allegations against it in the Complaint, then Amazon.com, Inc. is entitled to indemnification from other defendants in any amount that this Amazon.com, Inc. may be required to pay Plaintiffs.

CROSSCLAIM FOR CONTRIBUTION AND/OR SETOFF

While Amazon.com, Inc. denies liability in all aspects, it alternatively avers that, should it be found liable in any respect, Amazon.com, Inc. seeks contribution and/or set-off for all claims made or to be made by Plaintiffs against any and all co-Defendants.

ANSWER TO ALL PAST, PRESENT AND FUTURE CROSSCLAIMS

Amazon.com, Inc. denies the allegations of any crossclaims that have been filed or may be filed in the future by any co-Defendant and demands that such crossclaims be dismissed.

WHEREFORE, Defendant Amazon.com, Inc. respectfully requests that judgment be entered in its favor and that it be awarded costs, fees and such other relief as this Court deems just and proper.

[signature block follows on next page]

/s/ Katherine J. Sullivan

Katherine J. Sullivan (#5993)

WHARTON LEVIN EHRMANTRAUT & KLEIN, P.A.

300 Delaware Avenue, Suite 1110

P.O. Box 1155

Wilmington, DE 19801

Telephone: (302) 252-0090

Fax: (302) 252-0099

Email: kjs@wlekn.com

Attorney for Defendant

Amazon.com, Inc.

OF COUNSEL:

Michael T. Wharton, Esquire

WHARTON LEVIN EHRMANTRAUT & KLEIN, P.A.

104 West Street, P.O. Box 551

Annapolis, MD 21404

410-263-5900

mtw@wlekn.com

DATED: September 9, 2021